

**NEELY & CALLAGHAN**

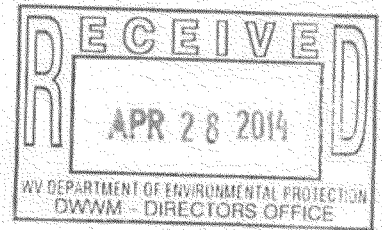
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April 25, 2014

**Via Certified Mail (Return Receipt Requested)**

Disposal Service, Incorporated  
1001 Fannin Street  
Suite 4000  
Houston, TX 77002

CT Corporation System  
West Virginia Registered Agent for Disposal  
Service, Incorporated  
5400 D Big Tyler Road  
Charleston, WV 25313

Waste Management of West Virginia,  
Incorporated  
1001 Fannin Street  
Suite 4000  
Houston, Texas 77002

CT Corporation System  
West Virginia Registered Agent for Waste  
Management of West Virginia, Incorporated  
5400 D Big Tyler Road  
Charleston, WV 25313

Disposal Service, Incorporated  
c/o General Manager  
State Route 34  
Hurricane, WV 25526

**Re: Notice of Endangerment Pursuant to Section 7002(b)(2)(A) of the Resource  
Conservation and Recovery Act, 42 U.S.C. § 6972(b)(2)(A)**

**and**

**Notice of Intent to File Citizen Suit Pursuant to the West Virginia Hazardous  
Waste Management Act, W. Va. Code § 22-18-19**

To Whom It May Concern:

Our law practice group represents the City of Hurricane, West Virginia ("City") and the County Commission of Putnam County, West Virginia ("County") (City and County collectively "County"). The Governmental Plaintiffs hereby provide Disposal Service, Incorporated ("DSI"), Waste Management of West Virginia, Incorporated ("WMI") (DSI and WMI collectively "Defendants"), and their West Virginia Registered Agents with the Governmental Plaintiffs' Notice of Endangerment and intent to file a "citizen suit" pursuant to the Resource Conservation and Recovery Act ("RCRA") § 7002(a)(1)(B), 42 U.S.C. § 6972(a)(1)(B) (2014), to address Defendants' contributions to conditions that may present an imminent and substantial endangerment to health or the environment ("Notice").

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Waste Management of West Virginia, Inc.  
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Section 7002(b)(2)(A) of RCRA requires that a plaintiff give a defendant notice prior to filing a citizen suit. 42 U.S.C. § 6972(b)(2)(A) (2014); *see also*, 40 C.F.R. § 254, *et seq.* The purpose of this waiting period is to give the parties a reasonable time to resolve the matter cooperatively. However, in cases where the alleged endangerment is respecting violations of Subtitle C of RCRA (also known as Subchapter III of RCRA), Governmental Plaintiffs may file suit immediately after providing notice of intent to do so. 42 U.S.C. § 6972(b)(2)(A)(iii) (2014).

As discussed more fully below, the alleged endangerment here arises from improper disposal of remediation residue containing commercial chemical products known by the trade names “Crude MCHM,” propylene glycol phenyl ether or “PPH,” and dipropylene glycol phenyl ether or “DiPPH.” According to relevant Material Safety Data Sheets (“MSDS”), Crude MCHM is a chemical mixture containing the commercial chemical product “methanol.” Pursuant to regulations promulgated by the U.S. Environmental Protection Agency, methanol is listed as both a “hazardous waste” under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.* (*see* 40 C.F.R. § 261.33), and a “hazardous substance” under section 102(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9602(a) (*see* 40 C.F.R. § 302.4). Given that the endangerment arises from the improper disposal of a constituent that is regulated under subtitle C of RCRA, the alleged endangerment is respecting a subtitle C violation. As such, the Governmental Plaintiffs may file suit immediately after providing this Notice.

In addition, Governmental Plaintiffs hereby provide Defendants with their Notice of Intent to file a potential citizen suit in West Virginia State Court pursuant to Section 19 of the West Virginia Hazardous Waste Management Act (“WV HWMA”), W. Va. Code § 22-18-19, for violations of the WV HWMA. Section 19 states, in relevant part, “Any person may commence a civil action . . . against any person who is alleged to be in violation of any provision of this article or any condition of a permit issued or rules promulgated hereunder, except that no action may be commenced under this section prior to sixty days after the plaintiff has given notice to the appropriate enforcement . . . authority and to the person against whom the action will be commenced . . .” W. Va. Code § 22-18-19 (2014). Defendants have violated the WV HWMA by improperly disposing of remediation residue containing Crude MCHM, PPH, DiPPH, and methanol, which is a RCRA subtitle C listed hazardous waste.

### **INTRODUCTION:**

Governmental Plaintiffs bring this action to abate a serious public nuisance condition and endangerment to human health and the environment within the City and County. Defendants own and operate the “DSI Landfill,” which is located in the City and County. Defendants improperly and unlawfully disposed of toxic substances at the DSI Landfill. The conditions created by the Defendants at the DSI Landfill are jeopardizing the public health, safety and environment of both the City and the County. The conditions are also threatening the public’s

use and enjoyment of public and natural resources within the City and the County. All of this is to the detriment of the inhabitants and taxpayers of both the City and the County.

Governmental Plaintiffs seek relief requiring the Defendants to: (a) fund or perform, under the oversight and supervision of Governmental Plaintiffs', a remedial investigation and abatement of the actual and potential endangerments described herein in full compliance with the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 C.F.R., Part 300, pursuant to RCRA § 7002(a)(1)(B), 42 U.S.C. § 6972(a)(1)(B); (b) abate the public nuisance described herein, in full compliance with the NCP, pursuant to state and federal law; and (c) reimburse Governmental Plaintiffs for their reasonable litigation costs, including reasonable attorneys' fees and expert witness fees and costs incurred and to be incurred in this action pursuant to RCRA § 7002(e), 42 U.S.C. § 6972(e).

### **DISCUSSION:**

#### ***The Release of Toxic Chemicals from the Freedom Property***

On or about January 9, 2014, a large quantity of toxic chemicals publicly estimated to be in the range of ten thousand (10,000) gallons was spilled from an aboveground storage tank located on property owned and/or operated by Freedom Industries, Inc., in Charleston, Kanawha County, West Virginia, immediately adjacent to and bordered by the Elk River ("the Freedom Property"). The aboveground storage tank contained, and the spilled material consisted of, Crude MCHM, PPH, and DiPPH.

As discussed above, relevant MSDS sheets for Crude MCHM reflect that it contains the commercial chemical product "methanol" (assigned number 67-56-1 by the Chemical Abstracts Service division of the American Chemical Society). Again, pursuant to regulations promulgated by the U.S. Environmental Protection Agency, methanol is listed as both a "hazardous waste" under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.* (see 40 C.F.R. § 261.33), and a "hazardous substance" under section 102(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9602(a) (see 40 C.F.R. § 302.4). As discussed below, Crude MCHM, PPH, and DiPPH are toxic chemicals that are harmful to human health, though the extent to which they are harmful is not fully appreciated.

An estimated 10,000 gallons of the toxic mixture spilled from the Freedom Property reached the Elk River. The toxic mixture entered the Elk River approximately 1.5 miles upstream of the public water system intake for West Virginia American Water Company ("WVAW"). WVAW is the supplier of potable drinking water to hundreds of thousands of customers in northwest West Virginia. The toxic mixture entered the WVAW facility, resulting in the distribution of contaminated water to consumers. As a consequence of this spill,

approximately 300,000 residents within nine (9) counties were quickly without potable water for drinking, bathing, and cooking.

Individuals in the vicinity of the spill at the Freedom Property and individuals receiving tainted water in their homes and at their places of work complained of a noxious licorice-like odor, nausea, and vomiting. According to the West Virginia Department of Health and Human Resources ("WV DHHR"), at least 26 people were admitted to area hospitals and 533 treated and released at those facilities for symptoms related to MCHM exposure. The Executive Director of the WV DHHR recently stated that "Those [numbers] are probably gross underestimates of the true public health impacts."

According to recent estimates by the West Virginia Testing Assessment Program ("WV TAP") (as discussed more fully below, assembled by the West Virginia Bureau for Public Health to investigate impacts of the MCHM releases to the Elk River) over 100,000 people experienced skin reactions, eye irritation, nausea or other ailments after exposure to MCHM. On or about January 9, 2014, WVAW announced publicly that water which it had distributed and which was intended for potable consumption from its facility in Charleston had become contaminated by the spill from the Freedom Property.

On the same date, West Virginia Governor Earl Ray Tomblin, recognizing a clear endangerment to human health, declared a State of Emergency for the nine West Virginia counties in which consumers of WVAW were located (Kanawha, Putnam, Cabell, Boone, Clay, Jackson, Logan, Lincoln, and Roane), and residents of the affected area were advised not to drink, bathe, or wash with water from WVAW. On or about January 10, 2014, the President of the United States declared a federal emergency for the affected areas of West Virginia in response to the spill event.

Although in late January the State of West Virginia eventually advised the public that consumption of water distributed by WVAW could resume, the U.S. Centers for Disease Control and Prevention ("CDC") advised that pregnant women should not consume it. Due to the uncertainty and lack of information regarding the health and environmental consequences of exposures to Crude MCHM and PPH, CDC reported "screening levels" of 1 ppm for Crude MCHM and 1.2 ppm for PPH. Thereafter, Governor Tomblin established a safe drinking water maximum contaminant level at 10 parts per billion ("ppb") for Crude MCHM. It was not until February 28, 2014 that the Governor of West Virginia lifted the State of Emergency declaration. On or about March 3, 2014, CDC advised that pregnant women could resume drinking water distributed by WVAW.

### ***The Hazardous and Toxic Nature of the Spilled Contaminants***

#### **The State's Efforts to Evaluate the Contaminants**

Again, the West Virginia Bureau for Public Health established the WV TAP in February 2014 to initiate an in-depth analysis to determine the odor threshold for Crude MCHM, to begin assessing tap water in homes in the affected areas, and to establish a panel of independent experts to evaluate the safety factor for the chemicals spilled from the Freedom Property. On or about March 17, 2014, WV TAP released a report entitled "Health Effects for Chemicals in 2014 West Virginia Chemical Release: Crude MCHM Compounds, PPH and DiPPH," stating that "the exact chemical composition of the spilled liquid" from the Freedom Property "remains somewhat undefined" and that the "exact composition" of the chemicals "has not been chemically confirmed."

WV TAP explained in its report that Crude MCHM contains a mixture of six organic compounds, MCHM, MMCHM, MMCHC, DMCHDC, CHDM and Methanol, but that it has been reported by Freedom Industries that in addition to Crude MCHM, the leaked liquid also contained PPH and DiPPH. WV TAP's report explained that "[v]ery limited toxicological data has been reported for Crude MCHM or pure MCHM[.]" WV TAP reported that the United States Environmental Protection Agency has developed a national system providing toxicity information to the public but that it lists absolutely no toxicology data for Crude MCHM, MCHM, MMCHM, MMCHC, PPH, DiPPH and Polypropylene glycol phenyl ether. WV TAP noted that the USEPA list of maximum contaminant levels for drinking water does not include any level with regard to the known chemical ingredients of Crude MCHM or PPH.

WV TAP also issued a "Technical Memorandum" on a short study conducted regarding the odor threshold concentration and recognition level of people with regard to Crude MCHM in water. The study indicated that humans could detect the odor of Crude MCHM when it was lower than analytical reports could detect. Further, the study indicated that because of the odor, people objected to consuming the water.

#### **The Manufacturer Has Acknowledged the Hazardous Nature of the Contaminants**

Eastman Chemical Company ("Eastman"), the manufacturer and supplier of Crude MCHM, formally advises with regard to Crude MCHM: "Avoid release to the environment." Eastman also advises that the method for containment and cleaning up of MCHM is to "[a]bsorb the spill with vermiculite or other inert material, then place in a container for chemical waste." For large spillages, Eastman advises "Flush spill area with water spray, Prevent runoff from entering drains, sewers, or streams, Dike for later disposal". The manufacturer's recommended disposal method for Crude MCHM is incineration. The relevant MSDS from Eastman instructs as follows: "Mix with compatible chemical which is less flammable and incinerate." As to the

toxicity of Crude MCHM to fish, aquatic invertebrates and aquatic plants, Eastman reports that there are "[n]o data available."

The Crude MCHM Waste and Residue Are Both a "Hazardous Waste" Under  
Applicable Statutes and Regulations, Including Those Issued Under  
RCRA Subtitle C, and a "Hazardous Substance" Under CERCLA

RCRA was enacted by Congress in 1976, as an amendment to the 1965 Solid Waste Disposal Act. Subtitle C of RCRA establishes a national, comprehensive "cradle to grave" management system for substances determined to be hazardous wastes, regulating, *inter alia*, the manner in which such wastes can be treated, stored, and disposed of. *See* 42 U.S.C. §§ 6921-6934. Under RCRA § 3006(b), 42 U.S.C. § 6926(b), a state may develop its own hazardous waste program and, following notice and an opportunity for public hearing, apply for and obtain U.S. EPA approval for such program to operate in lieu of the federal program within such state, subject to certain federal requirements, the most notable of which is that the state program must be equivalent to and consistent with the federal RCRA Subtitle C hazardous waste management program. *See* 42 U.S.C. § 6926(b). West Virginia's hazardous waste program, which is substantially similar to the federal program, has been formally approved by the Administrator of the U.S. Environmental Protection Agency and, accordingly, operates "in lieu of" the federal RCRA program within the State of West Virginia.

The WV HWMA defines the term "hazardous waste" in a manner that is virtually identical to the Congressional definition set forth in RCRA § 1004(5), 42 U.S.C. § 9604(5). The WV HWMA defines the term "hazardous waste" to mean:

[A] waste or combination of wastes, which because of its quantity, concentration or physical, chemical or infectious characteristics, **may**:

(A) Cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or

(B) pose a substantial present or **potential hazard** to human health or the environment when improperly treated, stored, transported, disposed of or otherwise managed.

West Virginia Code § 22-18-3(6) (emphasis added).

As a consequence of its recognized toxicity and its patently hazardous nature as to human health and the environment, Crude MCHM and the MCHM wastes and residues plainly meet the foregoing statutory definition and are hazardous wastes. Section 22-18-6 of the West Virginia Code provides that the Director of the West Virginia Department of Environmental Protection ("WV DEP") is responsible for promulgating, in consultation with other state agencies, rules establishing criteria for identifying the characteristics of hazardous waste, identifying the characteristics of hazardous waste and listing particular hazardous wastes which are subject to the provisions [of the WV HWMA]. West Virginia Code § 22-18-6(a)(2).

To accomplish this objective, the Director adopted and incorporated, with certain exceptions, applicable federal regulations from Subtitle C of RCRA pertinent to the listing and identification of hazardous wastes subject to the state's regulatory program. *See* West Virginia Code of State Regulations § 33-20-3 (adopting and incorporating the hazardous waste identification and listing regulations of 40 C.F.R. Part 261, with certain modifications, exceptions and additions).

Included within the federal regulations adopted and incorporated into the West Virginia hazardous waste management program is the designation of the commercial chemical product "methanol", a key component of the "Crude MCHM" mixture, as a "listed" regulatory hazardous waste under 40 C.F.R. § 261.33 and its West Virginia counterpart, when that commercial chemical product is discarded (specifically including spilled or leaked) or intended to be discarded.

Both the federal RCRA Subtitle C program and the West Virginia hazardous waste management program provide for the identification of regulatory hazardous wastes by characteristic, including the characteristic of toxicity, which is determined by application of a designated testing protocol set forth in 40 C.F.R. § 261.24 (adopted by reference into the West Virginia hazardous waste management program by Section 33-20-3 of the West Virginia Code of State Regulations).

With certain exceptions not herein applicable, 40 C.F.R. § 261.24 provides that a waste exhibits the characteristic of toxicity and is thus a "hazardous waste listed and identified by the Administrator" under RCRA Subtitle C, and a regulated Hazardous Waste under the WV HWMA if (using the Toxicity Characteristic Leaching Procedure, test Method 1311 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846) the extract from a representative sample of the waste contains any of the contaminants listed in the table in that section at the concentration equal to or greater than the respective value given in that table.

In the case of organic chemicals (like MCMH), each of the section 261.24 toxicity table values was derived from a known toxicity level, deemed acceptable under another regulatory

scheme, typically the federal Safe Drinking Water Act ("SDWA"). *See* 55 FR 11798 (March 29, 1990). While RCRA is Congress's effort to address land pollution through the regulation of solid and hazardous wastes, the SDWA contains Congress's strict and enforceable "end-of-the drinking water pipe" standards for the nation's public drinking water supply. The SDWA accomplishes this goal by setting safe contaminant concentration values—known as maximum contaminant levels or "MCLs"—for contaminants known to pose health risks when present in drinking water.

To derive the 40 CFR § 261.24 toxicity table values (which set toxicity thresholds for RCRA regulatory hazardous waste determinations), U.S. EPA multiplies the relevant toxicity value (typically the MCL under SDWA) for an organic chemical by a dilution/attenuation factor ("DAF"), which is typically 100 for allowable drinking water levels. *See* 55 FR 11798 (the DAF "estimates the dilution and attenuation of the toxic constituents in a waste as they travel through the subsurface from the point of leachate generation (i.e., the landfill) to the point of human or environmental exposure.") Thus, for each MCL set pursuant to SDWA to protect against health threat in a public water supply, a corresponding TCLP value has been derived as a product of the MCL and the DAF for purposes of protecting the nation's groundwater from those same health threats via leachate from a landfill or land disposal unit.

Although no MCL has been set under the SDWA for either "Crude MCHM" or PPH, the Governor of West Virginia, exercising emergency executive authority, set an emergency screening level and a provisional MCL of 10 parts per billion (10 ppb) for MCHM in the state's drinking water. Accordingly, *for MCHM*, a corresponding emergency or provisional TCLP threshold of 1 part per million (1 ppm) should also be recognized for the purpose of determining whether a substance that is a waste under the West Virginia Hazardous Waste Regulations is a hazardous waste for the purposes of those same regulations, at least in the context of this State & Federal Emergency until U.S. EPA or the WV Department of Environmental Protection establishes a different standard through the rule-making process.

On information and belief, the Crude MCHM Wastes and Residues which Defendants accepted and disposed of at the DSI Landfill in Hurricane, West Virginia, contained MCHM at concentrations well in excess of 1 ppm. Accordingly, the Crude MCHM Wastes and Residues are and should be considered hazardous wastes, both in the context of the statutory definitions outlined above and in the context of the "listed and identified" hazardous wastes subject to the applicable state and federal regulatory schemes.

The federal Comprehensive Environmental Response, Compensation & Liability Act ("CERCLA" or "federal Superfund Act") (42 U.S.C. § 9601-- 9675) provides a comprehensive mechanism and a statutory and regulatory framework to direct governmental entities and private parties responding to the release of hazardous substances into the environment and provides guidance, cleanup criteria, and controls for such remedial activities. In Section 102(a) of



CERCLA”), 42 U.S.C. § 9602(a), Congress directed the Administrator of the U.S. Environmental Protection Agency to designate “as hazardous substances . . . such elements, compounds, mixtures, solutions, and substances which, when released into the environment may present substantial danger to the public health or welfare or the environment.” 42 U.S.C. § 9602(a). The Administrator’s designations are set forth at 40 C.F.R. § 302.4, in which the substance “methanol” is listed. As noted above, methanol is a component of Crude MCHM.

Federal courts have recognized that where a waste material contains a hazardous substance, like methanol, then that waste material is itself a hazardous substance for the purposes of CERCLA. *See, e.g., United States v. Carolawn*, 21 Env’t Rep. Cases 2124, 2126 (D.S.C. 1984). Accordingly, the Crude MCHM waste from the Freedom Property—a substance which contains a CERCLA hazardous substance—is undeniably a CERCLA hazardous substance itself, and funds could be made available from the West Virginia Hazardous Waste Emergency Response Fund (W. Va. Code Art. 22-19) to address the release of such a substance.

***Notwithstanding the Patently Hazardous Nature of the MCHM Wastes and Residues and the Recognized Endangerments Associated with Human Exposure to Such Wastes and Residues, Spill Wastes and Residues Containing Crude MCHM, PPH, and DiPPH, Were Disposed of at the DSI Landfill, Without Governmental Plaintiffs’ Knowledge or Consent***

Beginning in January 2014, cleanup efforts were undertaken to remove both spilled/discarded Crude MCHM and soil and groundwater that had been contaminated with Crude MCHM, PPH and DiPPH (hereinafter collectively, “Crude MCHM Waste and Residue”) from the Freedom Property. On information and belief, the Crude MCHM Waste and Residue were removed from the Freedom Property and taken offsite to an interim location, where such wastes were stored for some period of time.

On or about March 12, 2014, the City and the County learned of and received complaints from residents of a powerful and noxious odor, emanating from the DSI Landfill. The odor reports that Governmental Plaintiffs received were consistent with odors reported by individuals in the vicinity of the Freedom Property following the January 2014 spill and odors reported by those who had received tainted potable water from WVAW during the same period. Through their investigation of the complaints from the public concerning the odor, both Governmental Plaintiffs discovered that Crude MCHM Waste and Residue from the Freedom Property and spill site was being transported from an off-site storage location through Putnam County and the City of Hurricane to DSI’s solid waste landfill.

Defendants never notified either Plaintiff or the general public of their intent to accept MCHM Waste at the DSI Landfill. Nor did Defendants provide any public notice or opportunity to comment as to their application to the WV DEP to modify their operating permit to allow

acceptance of Crude MCHM Waste and Residue. DSI and WMI have admitted that they have accepted at least nine (9) truckloads of MCHM Waste, including "cleanup water" tainted with Crude MCHM, for disposal at the DSI Landfill. DSI and WMI admitted that eight of the at least nine truckloads arrived at the DSI Landfill in liquid form, were placed into a concrete-lined pit, and was then "solidified" by mixing it with sawdust by use of a backhoe. The other truckload arrived at the landfill in an already "solidified" form, having been treated by a third party in an undetermined manner. According to DSI and WMI this toxic "solidified" mixture was then "mixed in with the general waste mass at various locations of the landfill."

DSI and WMI have also admitted that efforts were made to dilute the Crude MCHM Waste and Residue in an effort to abate or mitigate its toxic effects. The DSI solid waste landfill is open to the environmental elements. It rains in Putnam County, and such rain often mixes with landfill contents. There are other various liquids in a landfill that will mix with solidified substances in the landfill. The leachate collected from DSI's landfill eventually makes its way via a leachate collection system to the wastewater treatment facility of the City. Eventually, the wastewater at the City's Publicly Owned Treatment Works ("POTW" or "wastewater treatment facility") is discharged into Hurricane Creek, a stream of the State of West Virginia.

On information and belief, the MCHM Wastes and Residue which Defendants accepted and disposed of at the DSI landfill in the City contained MCHM at concentrations well in excess of 1 ppm. Accordingly, for the purposes of West Virginia hazardous waste regulation, the Crude MCHM Waste and Residue were, in the context of the Declared Public Emergency during which those wastes were generated, necessarily a provisional hazardous waste regulated pursuant to Article 22-11 of the West Virginia Code, and should have been treated, stored, and disposed of in a manner required as to all hazardous wastes regulated under Article 22-18 of the West Virginia Code.

The DSI Landfill is not a facility which was designed, engineered, or constructed to accept RCRA Subtitle C hazardous wastes or toxic wastes such as the Crude MCHM Waste and Residue for disposal. On information and belief, the Defendant owners and operators of the DSI Landfill have not satisfied any of the conditions necessary for the DSI Landfill to become licensed to accept any RCRA Subtitle C hazardous waste. The DSI Landfill is, at a minimum, poorly suited as a disposal site for hazardous and toxic waste materials, including the MCHM Wastes and Residues, and the decision to place such wastes into that landfill was grossly ill-considered, at best.

The cleanup and removal of MCHM Wastes and Residues from the Freedom Property and spill site was intended as a "remedy," within the meaning of Section 101(25) of CERCLA, 42 U.S.C. § 9601(25), since such activities involved the cleanup of a CERCLA hazardous substance. Congress, however, has directed that the offsite transport and disposal of hazardous substances or contaminated materials without treatment to permanently and significantly reduce

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the volume, toxicity or mobility of the hazardous substances should be the least favored alternative remedial action where practicable treatment technologies are available. *See* 42 U.S.C. § 9621(b). Stated differently, Congress plainly recognized that transporting untreated hazardous substances for placement into a landfill is to be avoided, unless there are no other alternatives. (This would be particularly true where a landfill in question is not designed, engineered, or licensed to accept toxic or hazardous wastes.)

The conditions at an emanating from the DSI Landfill constitute both an imminent and substantial endangerment and a nuisance affecting public health, in that the MCHM Wastes and Residues—toxic substances as to which the full epidemiologic effects are not yet understood—have entered or threaten to enter the environment by leaching or leaking from such landfill, which was not designed, engineered, constructed, or operated to handle or contain hazardous wastes, into the soil and groundwater surrounding such landfill, thereby endangering and adversely affecting, *inter alia*, the environment, the public water supply and, ultimately, public health and safety.

**PERSONS GIVING NOTICE:**

The full name, address and telephone number of the persons giving notice to the Defendants under this Notice is as follows:

City of Hurricane, West Virginia  
3255 Teays Valley Road  
Hurricane, West Virginia 25526  
Telephone: (304) 562-5896

County Commission of Putman County, West Virginia  
3389 Winfield Rd #2  
Winfield, West Virginia 25213  
Telephone: (304) 586-0201

The Governmental Plaintiffs, however, should be contacted through their undersigned counsel with respect to this Notice at the following address and telephone number:

Michael O. Callaghan, Esq.  
Law Offices of Neely & Callaghan  
159 Summers Street  
Charleston, West Virginia 25301  
Telephone: (304) 343-6500  
E-mail: [mcallaghan@neelycallaghan.com](mailto:mcallaghan@neelycallaghan.com)

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If you would like to discuss this Notice, please contact the above-referenced counsel for the Governmental Plaintiffs with respect to this Notice at the address and telephone number listed above.

Sincerely,

JENNIFER SCRAGG KARR  
PUTNAM COUNTY ATTORNEY  
PUTNAM COUNTY, WV

RONALD JAMES FLORA  
HURRICANE CITY ATTORNEY  
HURRICANE, WV

BY:



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cc: Gina McCarthy, Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

Shawn M. Garvin, Regional Administrator  
U.S. Environmental Protection Agency, Region 3  
1650 Arch Street  
Philadelphia, PA 19103

Randy C. Huffman, Cabinet Secretary  
West Virginia Department of Environmental Protection  
601 57th Street SE  
Charleston, WV 25304

Scott Mandirola, Director  
Division of Water and Waste Management  
West Virginia Department of Environmental Protection  
601 57th Street SE  
Charleston, WV 25304